

§ 81.102 Verification and enforcement to ensure GSE data integrity.

(a) *Independent verification authority.* The Secretary may independently verify the accuracy and completeness of the data, information, and reports provided by each GSE, including conducting on-site verification, when such steps are reasonably related to determining whether a GSE is complying with 12 U.S.C. 4541-4589 and the GSE's Charter Act.

(b) *Certification.* (1) The senior officer of each GSE who is responsible for submitting to HUD the fourth quarter Annual Mortgage Report and the AHAR under sections 309(m) and (n) of the Fannie Mae Charter Act or sections 307(e) and (f) of the Freddie Mac Act, as applicable, or for submitting to the Secretary such other report(s), data, or information for which certification is requested in writing by the Secretary, shall certify such report(s), data or information.

(2) The certification shall state as follows: "To the best of my knowledge and belief, the information provided herein is true, correct and complete."

(3) If the Secretary determines that a GSE has failed to provide the certification required by paragraphs (b)(1) and (b)(2) of this section, or that a GSE has provided the certification required by paragraph (b) in connection with data, information or report(s) that the Secretary later determines are not true, correct and complete, the Secretary may pursue the enforcement remedies under paragraph (e) of this section. For data, information or report(s) subject to paragraphs (c) or (d) of this section, the Secretary may pursue the enforcement remedies described in paragraph (e) only in connection with material errors, omissions or discrepancies as those terms are defined in § 81.102(c) or (d).

(c) *Verification procedure and adjustment to correct errors, omissions or discrepancies in AHAR data for the immediately preceding year.* (1) This paragraph (c) pertains to the GSEs' submission of year-end data. For purposes of this paragraph, "year-end data" means data that HUD receives from the GSEs related to housing goals performance in the immediately preceding year and covering data reported in the fourth

quarter Annual Mortgage Report and the GSE's AHAR. An "error" means a technical mistake, such as a mistake in coding or calculating data. An "omission" means a GSE's failure to count units in the denominator. A "discrepancy" means any difference between HUD's analysis of data and the analysis contained in a GSE's submission of data, including a discrepancy in goal or Special Affordable subgoal performance.

(2) If HUD finds errors, omissions or discrepancies in a GSE's year-end data submissions relative to HUD's regulations, HUD will first notify the GSE by telephone or e-mail transmission of each such error, omission or discrepancy. The GSE must respond within five working days of each such notification. HUD may, in its discretion or upon a request by a GSE within the five working day period, extend the response period for up to an additional 20 working days. Information exchanges during the five working day period following initial notification, and any subsequent extensions of time that may be granted, may be by electronic mail. Any person with delegated authority from the Secretary, or the Director of HUD's Financial Institution Regulation Division, or his or her designee, shall be responsible for issuing initial notifications regarding errors, omissions, or discrepancies; making determinations on the adequacy of responses received; approving any extensions of time permitted under this provision; and managing the data verification process.

(3) If each error, omission or discrepancy is not resolved to HUD's satisfaction during the initial five working day period from notification, and any extension period, the Secretary will notify the GSE in writing and seek clarification or additional information to correct the error, omission or discrepancy. The GSE shall have 10 working days (or such longer period as the Secretary may establish, not to exceed 30 working days) from the date of the Secretary's written notice to respond in writing to the notice. If the GSE fails to submit a written response to the Secretary within this period, or if the Secretary determines that the GSE's

written response fails to correct or otherwise resolve each error, omission or discrepancy in its reported year-end data to the Secretary's satisfaction, the Secretary will determine the appropriate adjustments to the numerator and the denominator of the applicable housing goal(s) and Special Affordable subgoal(s) due to the GSE's failure to provide the Secretary with accurate submissions of data.

(4) The Secretary, or his or her designee, shall inform a GSE in writing, at least five working days prior to HUD's release of its official performance figures to the public, of HUD's determination of official goals performance figures, including any adjustments. During the five working days prior to such public release, a GSE may request, in writing, a reconsideration of HUD's final determination of its performance and must provide the basis for requesting the reconsideration. If the request is granted, the Secretary will consider the GSE's request for reconsideration of its determination of goals performance and make a final determination regarding the GSE's performance, within 10 working days of the Secretary's granting of the GSE's written request for reconsideration.

(5) Should the Secretary determine that additional enforcement action against the GSE is warranted for material errors, omissions or discrepancies with regard to a housing goal or Special Affordable subgoal, it may pursue additional remedies under paragraph (e) of this section. An error, omission or discrepancy is material if it results in an overstatement of credit for a housing goal or Special Affordable subgoal, and, without such overstatement, the GSE would have failed to meet such housing goal or Special Affordable subgoal for the immediately preceding year.

(d) *Adjustment to correct prior year reporting errors, omissions or discrepancies*—(1) *General*. The Secretary may require a GSE to correct a material error, omission or discrepancy in a GSE's prior year's data reported in the fourth quarter Annual Mortgage Report and the GSE's AHAR under sections 309(m) and (n) of the Fannie Mae Charter Act or sections 307(e) and (f) of the Freddie Mac Act, as applicable. An

error, omission or discrepancy is material if it results in an overstatement of credit for a housing goal or Special Affordable subgoal and, without such overstatement, the GSE would have failed to meet such housing goal or Special Affordable subgoal for the prior year. A "prior year" for purposes of this section is any one of the two years immediately preceding the latest year for which data on housing goals performance was reported to HUD.

(2) *Procedural requirements*. In the event the Secretary determines that a GSE's prior year's fourth quarter Annual Mortgage Report or AHAR contain a material error, omission or discrepancy, the Secretary will provide the GSE with an initial letter containing written findings and determinations within 24 months of the end of the relevant GSE reporting year. The GSE shall have an opportunity, not to exceed 30 days from the date of receipt of the Secretary's initial letter, to respond in writing with supporting documentation, to contest the Secretary's initial determination that there was a material error, omission or discrepancy in a prior year's data. The Secretary shall then issue a final determination letter within 60 days of the date of HUD's receipt of the GSE's written response or, if no response is received, within 90 days of the date of the GSE's receipt of the Secretary's initial letter. The Secretary may extend the period for issuing a final determination letter by an additional 30 days and may grant the GSE an opportunity, for a period not to exceed 10 working days from the date of the GSE's receipt of the determination letter to request that the determination be reconsidered.

(3) If the Secretary determines that a GSE's prior year's fourth quarter Annual Mortgage Report or AHAR contained a material error, omission or discrepancy, the Secretary may direct the GSE to correct the overstatement by purchasing mortgages to finance the number of units that HUD has determined were overstated in the prior year's goal performance (or, for the Special Affordable subgoal, the number or dollar amount, as applicable, of mortgage purchases that HUD has determined were overstated), or that

equal the percentage of the overstatement in the prior year's goal or Special Affordable subgoal performance as applied to the most current year-end performance, whichever is less. Units or mortgages purchased to remedy an overstatement in the housing goals or the Special Affordable subgoal must be eligible to qualify under the same goal or Special Affordable subgoal that HUD has determined were overstated in the prior year.

(4) If a GSE does not purchase a sufficient amount or type of mortgages to meet the requirements set forth in paragraph (d)(3) of this section as directed by the Secretary by no later than the end of the calendar year immediately following the year in which the Secretary notifies the GSE of such overstatement (unless, upon written request from the GSE, the Secretary, in his or her discretion, determines that a grant of additional time is appropriate to correct or compensate for the overstatement) the Department may pursue any or all of the following remedies:

(i) Issue a notice that the GSE has failed a housing goal or Special Affordable subgoal in the prior year;

(ii) Seek additional enforcement remedies under paragraph (e) of this section;

(iii) Pursue any other civil or administrative remedies as are available to it.

(e) *Additional enforcement options*—(1) *General*. In the event the Secretary determines, either as a result of his or her independent verification authority described in paragraph (a) of this section, or by the authority set forth in paragraphs (b), (c) or (d) of this section, that any of the following circumstances has occurred with respect to data, information or report(s) required by sections 309(m) or (n) of the Fannie Mae Charter Act, sections 307(e) or (f) of the Freddie Mac Act, or subpart E of this part, the Secretary may regard this as a GSE's failure to submit such data, information or report(s) and, accordingly, the Secretary may take the additional enforcement actions authorized by paragraph (e)(2) of this section:

(i) A GSE fails to submit the certification required by paragraphs (b)(1)

and (b)(2) of this section in connection with such data, information or report(s); or

(ii) A GSE submits the certification required by paragraph (b) of this section, but the Secretary later determines that the data, information or report(s) are not true, correct and complete. For data, information or report(s) subject to paragraphs (c) or (d) of this section, the Secretary may pursue the additional enforcement remedies under paragraph (e)(2) only in connection with material errors, omissions or discrepancies, as those terms are defined in § 81.102(c) or (d). In addition, the Secretary may only pursue such remedies in connection with material errors, omissions or discrepancies arising under paragraph (d) of this section if the GSE has failed to purchase a sufficient amount or type of mortgages, as provided in paragraphs (d)(3) and (d)(4) of this section.

(2) *Remedies*. (i) *Submissions required under the GSE's charter acts*. After the Secretary makes a determination under paragraph (e)(1) of this section that any of the circumstances described in paragraphs (e)(1)(i) or (ii) has occurred with respect to data, information, or report(s) required by sections 309(m) or (n) of the Fannie Mae Charter Act, or by sections 307(e) or (f) of the Freddie Mac Act, the Secretary may pursue any or all of the following remedies in accordance with paragraph (e)(3), or applicable law, as appropriate:

(A) A cease-and-desist order against the GSE for failing to submit the required data, information or report(s) in accordance with this section;

(B) Civil money penalties against the GSE for failing to submit the required data, information or report(s) in accordance with this section;

(C) Any other civil or administrative remedies or penalties against the GSE that may be available to the Secretary by virtue of the GSE's failing to submit or certify the required data, information or report(s) in accordance with this section.

(ii) *Submissions required under subpart E of this part*. After the Secretary makes a determination under paragraph (e)(1) of this section that any of the circumstances described in paragraphs (e)(1)(i) or (ii) has occurred with

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respect to data, information or report(s) required under subpart E of this part (but that are not required by sections 309(m) or (n) of the Fannie Mae Charter Act or by sections 307(e) or (f) of the Freddie Mac Act), the Secretary may pursue any civil or administrative remedies or penalties against the GSE that may be available to the Secretary. The Secretary shall pursue such remedies under applicable law.

(3) *Procedures.* The Secretary shall comply with the procedures set forth in subpart G of this part in connection with any enforcement action that he or she may initiate against a GSE under paragraph (e) of this section.

[69 FR 63642, Nov. 2, 2004]

PART 84—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

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APPENDIX A TO PART 84—CONTRACT PROVISIONS

AUTHORITY: 42 U.S.C. 3535(d).

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